



RACHEL DOUGHTY, ESQ.
1202 Oregon St.
Berkeley, CA 94702
T: 828.424.2005; F: 415.789.4556
rdoughty@greenfirelaw.com

By Certified Mail
Return Receipt Requested

November 12, 2014

National Registered Agents, Inc.
Agent for Service of Process
The Toro Company
818 W. Seventh St.
Los Angeles, CA 90017

Michael J. Hoffman
Chairman and Chief Executive Officer
The Toro Company
8111 Lyndale Avenue South
Bloomington, MN 55420-1196

Mike Robson
Senior Facilities Technician
The Toro Company
5825 Jasmine St.
Riverside, CA 92502

Re: Notice of Intent to File Citizen Suit Pursuant to the Federal Clean Water Act

Facility: The Toro Company
5825 Jasmine St.
Riverside, CA 92502
WDID No. 8 33I015417

Basin Plan: Water Quality Control Plan for the Santa Ana River Basin

Receiving Water: Tequesquite Arroyo and Santa Ana River

Gentlemen:

On behalf of 5 Gyres Institute ("5 Gyres"), whose address is 550 E. Rustic Road, Santa Monica, CA 90402, and telephone number is 310-998-8616, I write regarding violations under the federal Clean Water Act ("CWA") by The Toro Company ("Toro"), with regard to its facility located at: 5825 Jasmine St., Riverside, California 92502 (the "Facility"). The purpose of this letter is to provide Toro and its officers named above with notice of these violations and notice of our intent to file a lawsuit against the corporation and violators in sixty (60) days under the CWA in Federal District Court. 33 U.S.C. § 1365(a)(1).

The Clean Water Act prohibits the discharge of storm water from industrial activities except as allowed pursuant to a permit. See 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 126(c)(1). 5 Gyres intends to file suit for Toro's ongoing failure to comply with the procedural and substantive

Notice of Violation and Intent to File Suit
November 12, 2014

conditions of the State of California's National Pollutant Discharge Elimination System General Permit No. CAS000001, California Regional Water Quality Order No. 91-13-DWQ (as amended by Water Quality Orders Nos. 92-12-DWQ and 97-03-DWQ), Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities ("Stormwater Permit").

Toro consistently has violated the Clean Water Act over the last five years, including in the wet season for 2013-2014 with illegal discharges. In signing the Notice of Intent to comply with the Stormwater Permit ("NOI"), Toro's officers certified to the State of California that Toro had read the Stormwater Permit and was in compliance with its requirements. But as detailed below, information available to 5 Gyres indicates that Toro has failed to comply with many of the basic reporting, filing, and monitoring requirements of the Storm Water Permit and has discharged, and continues to discharge, pollutants unlawfully from the Facility. In addition to the violations explicitly noted herein, this notice letter ("Notice") covers all CWA violations of the same type evidenced by information that becomes available after the date of this Notice.

I. Background on Toro

Based on our investigation, Toro has been operating the Facility at its present location since at least 1999. The company certifies in its NOI to comply with the Storm Water Permit that it is classified under SIC code 3089 (plastic products). Toro engages in extensive industrial processes at the Facility, including at least manufacturing agricultural irrigation machinery and a wide variety of fiberglass, carbon, and graphite composite products. A number of its manufacturing processes are exposed to stormwater. The total area of the facility is approximately 25 acres and Toro reports at least two storm drains collecting stormwater covered by the Stormwater Permit.

The facility collects and discharges storm water from its operations into channels that are ultimately discharged into the Tequesquite Arroyo and the Santa Ana River (Reach 3). These waters are important breeding and nursery areas for native fish, including the Santa Ana sucker (*Catostomus santaannae*) which is endangered and protected under the Endangered Species Act.¹ The Santa Ana sucker needs low specific conductance and turbidity to thrive.²

II. Toro's Violations of the Clean Water Act and Stormwater Permit

Our investigation, including a review of Toro's annual reports submitted to the State Water Resources Control Board and/or the Regional Water Board, indicates that Toro routinely discharges water that violates effluent limitations, potentially pollutes a receiving water, and threatens to, and likely causes, contamination and adverse impacts to the environment in violation of the Water Quality Control Plan for the Santa Ana River Basin ("Basin Plan"). Toro also fails to monitor and sample the minimum required rain events each season. Toro has failed to respond to requests to make available its Storm Water Pollution Prevention Plan ("SWPPP"). Finally, site operations include open dumpsters, various industrial refuse, and significant large, industrial metal equipment that are exposed to stormwater.

The Stormwater Permit governs storm water discharges by among other things:

- Prohibiting the discharge of storm water pollutants that cause or threaten to cause pollution, contamination, or nuisance. Discharge Prohibition A.2.

¹ Santa Ana River Basin Plan, p. 1-10 (as revised February 2008).

² Revised Critical Habitat for Santa Ana Sucker, 75 Fed. Reg. 77962, 77962-77 (Dec. 14, 2010).

Notice of Violation and Intent to File Suit
November 12, 2014

- Requiring facilities to reduce or prevent pollutant associated with industrial activities in storm water with best available technology economically achievable, “BAT,” for toxic pollutants and best conventional pollutant control technology, “BCT,” for conventional pollutants.³ Effluent Limitation B(3).
- Prohibiting storm water discharges and authorized non-storm water discharges to surface water or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(1).
- Prohibiting storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable water quality standard.⁴ Receiving Water Limitation C(2).

As discussed in detail below, Toro has or is likely to be violating all of the above provisions.

A. Failure to Sample Stormwater Discharge Locations

Toro does not sample a sufficient number of discharge locations. The Stormwater Permit requires sampling of “all drainage areas that represent the quality and quantity of the facility’s storm water discharges.” Stormwater Permit, Section B.7.a. Toro reports samples from only two drainage locations, which is insufficient for this facility.

B. Failure to Sample and Test Storm Water Discharges

Toro has failed repeatedly to comply with the Stormwater Permit’s sampling requirements. Permittees are required to sample the first and one other storm event of each wet season (if the first event is missed, a total of two storm events must be sampled) and to test those samples for common stormwater pollutants (pH, total suspended solids, specific conductance, and oil and grease or total organic carbon). Stormwater Permit, Section B.5.a. Samples must be taken within the first hour of the discharge and must be preceded by three working days without discharge. Id. at Section B.5.a and B.5.b. Toro’s sampling is deficient (see Exhibits A and B). Specifically:

- In the **2009-2010 wet season**, Toro sampled only once, at 3:00 pm, on the second day of a rain event, despite the fact that there were 10 days during the wet season with 0.23 or greater inches of rainfall. Although it was the second day of the rain event, high TSS was still discovered at both discharge locations, suggesting that had the samples been taken within the first hour of the rain event instead of late on the second day, the TSS concentration would have been higher.
- In the **2010-2011 wet season**, Toro sampled only once, at 7:00 am, on the fifth day of a rain event, despite the fact that there were 17 days during the wet season with 0.22 or greater inches of rainfall.⁵ Although no pollution was reported at levels exceeding EPA

³ The Environmental Protection Agency (“EPA”) has established benchmarks for pollutant discharges, which serve as the parameters to determine if a facility is properly implementing safeguards and procedures to prevent unlawful discharges. 65 Fed. Reg. 64746, Table 3. These benchmarks are relevant and an objective standard to evaluate whether a facility has implemented the requisite BAT and BCT. As discussed herein, Toro has violated the EPA benchmarks.

⁴ Water quality standards are established in the Santa Ana Regional Water Quality Control Board, Region 8, Water Quality Control Plan (“Basin Plan”), amended as of June 2011, available at: http://www.waterboards.ca.gov/rwqcb8/water_issues/programs/basin_plan/index.shtml (last accessed November 12, 2014).

⁵ December of 2010 was the wettest December on record in the Los Angeles area for over 121 years. See, e.g., www.sierraphotography.com/wxnotes/WettestDecemberInLosAngelesIn121YearsRainNewYearsWeekend.aspx.

Notice of Violation and Intent to File Suit
November 12, 2014

benchmarks, with five days of rain preceding sampling, the samples Toro did take are useless for monitoring purposes.

- In the **2011-2012 wet season**, Toro did not sample at all, despite the fact that there were 13 days during the wet season with 0.20 or greater inches of rainfall.
- In the **2012-2013 wet season**, Toro did not sample at all, despite the fact that there were six days during the wet season with 0.23 or greater inches of rainfall.
- In the **2013-2014 wet season**, Toro sampled only once, despite the fact that there were five days during the wet season with 0.22 or greater inches of rainfall.

C. Failure to Observe and Report Storm Water Discharges

Despite its certification otherwise, Toro has failed to visually observe storm water discharges. The Stormwater Permit requires visual observation of all discharge locations for one storm event of each of the eight months of the wet season. Visual observation must take place during the first hour of discharge on the first day of discharge that is preceded by at least three working days without discharge. Stormwater Permit, Section B.4. Toro has failed to meet this requirement and has been misleading in its annual reporting. Specifically:

- In the **2009-2010 Wet Season**, Toro certified that it visually observed discharge in each of the eight months of the wet season. However, on seven of the eight dates it indicated it observed discharges, there were either only 0.01 inches or no rainfall at all recorded. In addition, the visual observation reported on January 18 at 3:00 pm was late in the second day of rainfall, and the observation reported on April 14 (a day of no reported rainfall) was not preceded by at least three working days without discharge, as there was significant rainfall on April 12.
- In the **2010-2011 Wet Season**, Toro certified that it visually observed discharge in each of the eight months of the wet season. However, it failed to state on which dates those observations were made in seven of the eight months, including months in which there was little (e.g., January) or virtually no rainfall (e.g., April). The one date for which observation was reported (December 22, 2010) was on the fifth day of rainfall.
- In the **2011-2012 Wet Season**, Toro certified that it visually observed discharge in each of the eight months of the wet season. However, it failed to state on which dates those observations were made in six of the eight months, including months in which there was little (e.g., October) rainfall. Further evidence of unreliable reporting is Toro's representation that it tested on November 5, 2011, a date on which no rainfall was recorded.
- In the **2012-2013 Wet Season**, Toro certified that it visually observed discharge in each of the eight months of the wet season. However, it failed to state on which dates those observations were made in six of the eight months, including months in which there was little (e.g., November, May) or virtually no rainfall (e.g., April).
- In the **2013-2014 Wet Season**, Toro certified that it visually observed discharge in only two of the eight months of the wet season (October and November). There were rainfall events in February, March, and April that were not sampled.

Notice of Violation and Intent to File Suit
November 12, 2014

D. Failure to Make its SWPPP Available Upon Request

The Stormwater Permit requires that Toro make its SWPPP “available upon request of a representative of the Regional Water Board.” Stormwater Permit, Section A.10. As of the date of this notice, Toro has failed to provide its SWPPP to the Regional Board in response to requests made commencing in early October 2014.

E. Unlawful Discharges of Contaminated Storm Water

Although Toro’s sampling has been minimal in the last five years, of the only four rain events it has sampled, there have been three discharges with total suspended solids (“TSS”) reported in excess of the U.S. EPA’s benchmark. *See Exhibit A. See Toro’s Annual Storm Water Discharge Report 2009-2010 (“2009-2010 Annual Report”); Toro’s Annual Storm Water Discharge Report 2013-2014 (“2013-2014 Annual Report”).* As discussed in the previous section, sampling from the fourth rain event was not done until the fifth day of the rain event, rendering it useless as an accurate measure of site conditions. In short, even the minimal sampling conducted by Toro demonstrates clearly that pollutants have been discharged by the Facility, on an ongoing basis, into stormwater over the past five years. Stormwater with high TSS has adverse effects on aquatic life and habitats in the Santa Ana River and Tequesquite Arroyo, including sensitive and endangered species.

To date, Toro has not provided the Regional Board with a revised SWPPP containing any attempt to address these routine violations of the Storm Water Permit. The failure to do so violates Limitation C(3) of the Permit, and these violations have continued since the first exceedances of the EPA Benchmarks and other standards on or before the 2009 Wet Season.

F. Failure to File True, Timely, and Accurate Annual Reports

The CWA and Stormwater permit require that covered facilities submit a report by July 1st of each year to the Executive Officer for the Regional Water Quality Control Board responsible for the area (the “Annual Report”). Stormwater Permit, Section B(14). Facilities must include in their Annual Reports an analysis of stormwater sampling and an evaluation of the storm water controls. *Id.* Finally, the Annual Report must be signed and certified by an appropriate corporate officer. Stormwater Permit, Sections B(14), C(9), and (10).

As discussed above, Toro has not complied with a numerous provisions under the CWA and required by the Stormwater Permit. Nonetheless, Toro and its officers or managers (e.g., Facilities and Maintenance Mangers John Vierwenden and Mike Robson) for the past five years have inaccurately signed and certified Toro’s Annual Reports. These false certifications constitute violations of the CWA and the Stormwater Permit.

III. Conclusion

Pursuant to the CWA, 5 Gyres intends to pursue civil penalties against Toro for the violations described above, an injunction requiring Toro to cease continuing violations, and recovery from Toro of attorneys’ and experts’ fees and costs associated with this enforcement action. *See* 33 U.S.C. § 1319(d) (civil penalties); 40 C.F.R. § 19.4 (adjustment of civil monetary penalties for inflation); 33 U.S.C. § 1365(a) (injunctive relief); and 33 U.S.C. § 1365(d) (recovery of attorney fees and expert fees). Each separate violation of the CWA occurring during the period commencing five years prior to the date of the notice of intent to file suit subjects the violator to a penalty. The CWA authorizes civil penalties of up to \$37,500 per day per violation for CWA violations after January 12, 2009.

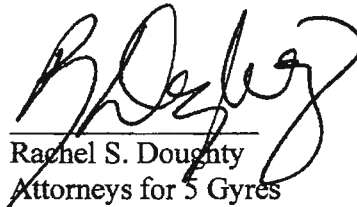
Notice of Violation and Intent to File Suit
November 12, 2014

At the end of the 60-day notice period, 5 Gyres intends to file a citizen suit under the CWA against Toro and its agents. 5 Gyres is willing to discuss effective remedies for the violations noted in this letter prior to filing suit. However, 5 Gyres does not intend to delay filing a complaint in federal court and therefore requests that Toro contact us promptly if it wishes to engage in discussions in the absence of litigation.

Please direct all communication related to this matter to Rachel Doughty, attorney for 5 Gyres, at:

Rachel Doughty
1202 Oregon Street
Berkeley, CA 94702
T: 828-424-2005
F: 415-789-4556
Email: rdoughty@greenfirelaw.com

Sincerely,



Rachel S. Doughty
Attorneys for 5 Gyres

Notice of Violation and Intent to File Suit
November 12, 2014

Cc via U.S. Mail:

Federal Entities

Eric H. Holder, Jr.
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Jared Blumenfeld, Regional Administrator
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, California 94105

Counsel (via email)

Gary A. Davis
Davis & Whitlock, P.C.
Attorneys at Law
21 Battery Park Avenue, Suite 206
Asheville, NC 28801

State Entities

Thomas Howard
Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

Kurt V. Berchtold
Acting Executive Officer
Santa Ana Regional Water Quality Control
Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348

James Birkelund, Esq.
548 Market St., #11200
San Francisco, CA 94104

EXHIBIT A
Instances of Reported Violations
Storm Water Discharges

Wet Season	Date of Sample	Parameter	Sample Location (discharge point)	U.S. EPA Benchmark (mg/L)	Facility Concentration in Discharge (mg/L)
2013-2014	11/21/13	TSS		100	870
	ONLY ONE STORM EVENT WAS SAMPLED IN 2013 - 2014				
2012-2013	NO SAMPLES TAKEN IN 2012 - 2013				
2011-2012	NO SAMPLES TAKEN IN 2011- 2012				
2010-2011	ONLY ONE STORM EVENT WAS SAMPLED IN 2010 – 2011 NO VIOLATIONS REPORTED ⁶				
2009-2010	1/18/10	TSS	1	100	560
	1/18/10	TSS	2	100	200
	ONLY ONE STORM EVENT WAS SAMPLED IN 2009 – 2010				

⁶ Sample taken on fifth day of rain event, so no violations would be expected to be reported.

EXHIBIT B
Significant Rain Dates Since 2009-2010 Wet Season (greater than 0.20")⁷

Wet Season	Date	Rainfall	Observation Date or Time of Sample⁸
2009-2010	10/16/09	None	VO
	11/07/09	0.01	VO
	12/7/09	0.95	
	12/12/09	0.81	
	12/15/09	None	VO
	1/17/10	0.23	
	1/18/10	0.94	VO/ 3:00 pm
	1/19/10	0.67	
	1/20/10	0.87	
	1/21/10	1.35	
	1/22/10	1.32	
	2/16/10	0.01	VO
	2/27/10	0.80	
	3/24/10	None	VO
	4/12/10	0.59	
	4/14/10	None	VO
	5/22/10	None	VO
2010-2011⁹	11/20/10	0.39	
	12/5/10	0.34	
	12/6/10	0.27	
	12/18/10	0.22	
	12/19/10	0.54	
	12/20/10	0.61	
	12/21/10	1.36	
	12/22/10	2.49	VO/ 7:00 am
	12/29/10	0.56	
	1/2/11	0.30	
	2/18/11	0.32	
	2/19/11	0.54	
	2/25/11	0.28	
	2/26/11	0.67	
	3/20/11	0.75	
	3/23/11	0.31	

⁷ Rainfall for date when visual observations were reported is included as well.

⁸ VO indicates visual observation of stormwater reported on this date.

⁹ No dates were provided for the alleged visual observation of stormwater discharge for the months of October, November, January, February, March, April (total rainfall for the month reported at 0.04 inches), and May.

Notice of Violation and Intent to File Suit
November 12, 2014

	5/18/11	0.22	
2011-2012 ¹⁰	10/5/11	0.46	
	11/4/11	0.33	
	11/5/11	None	VO
	11/6/11	0.30	
	11/20/11	0.49	
	12/12/11	0.43	
	1/21/12	0.20	
	1/23/12	0.24	
	2/15/12	0.38	
	3/17/12	0.52	
	3/25/12	0.25	
	4/11/12	0.21	
	4/13/12	0.40	
	4/26/12	0.19	VO
2012-2013 ¹¹	10/11/12	0.24	
	12/13/12	0.49	
	12/24/12	0.23	
	1/26/13	0.49	
	2/8/13	0.57	VO
	3/8/13	0.55	VO
2013-2014 ¹²	10/9/13	0.30	VO
	11/21/13	0.49	VO/9:00 am ¹³
	2/28/14	1.02	
	3/1/14	0.25	
	4/25/14	0.22	

¹⁰ No dates were provided for the alleged visual observation of stormwater discharge for the months of October, December, January, February, March, and May.

¹¹ No dates were provided for the alleged visual observation of stormwater discharge for the months of October, November, December, January, April, and May.

¹² No dates were provided for the alleged visual observation of stormwater discharge for the months of December, January, February, March, April, and May.

¹³ 9:00 am sampling time is taken from the lab report, not the observation worksheet, which implausibly states the sample was taken at midnight.